IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14325 of 2001
Date of Decision: December 20, 2007

M.P. Hallan .....Petitioner

Versus

State Bank of India and others .....Respondents

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE MOHINDER PAL

Present: Shri D.S. Patwalia, Advocate, for the petitioner.

Shri Ashok Aggarwal, Senior Advocate, with
Shri Vikas Chatrath, Advocate, for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

The petitioner is an ex-serviceman and joined the respondent-Bank on 18.5.1981 as clerk. The Indian Banks' Association, of which the respondent-Bank is a member, evolved a Scheme called Voluntary Retirement Scheme after getting approval from the Government of India and advised the member-Banks to implement the same so as to curtail the staff's strength in the Bank. The respondent-Bank adopted the said Scheme on 29.12.2000 with certain modification. The Scheme was open to all permanent employees of the Bank, who have completed 15 years service or 40 years of age on 31.12.2000, except those specifically

mentioned as ineligible.

The Scheme was to remain open during the period 15.1.2001 to 31.1.2001 with an option to the Bank to close early/extend the Scheme, without assigning any reasons. The applications for voluntary retirement under the State Bank of India Voluntary Retirement Scheme (hereinafter referred to as `the Scheme') was to be accepted during this period only. Apart from the ex-gratia amount, the other benefits which were contemplated to be payable under the Scheme were as follows:-

> "6. Other benefits.
>
> a) Gratuity as payable under the extant instructions on the relevant date.
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> b) Provident Fund contribution as per State Bank of India Employees Provident Fund Rules as on relevant date.
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> c) Pension in terms of State Bank of India Employees' Pension Fund Rules on the relevant date (including commuted value of pension).
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> d) Encashment of balance of privilege leave, as applicable, on the relevant date."

On 10.1.2001, another circular (R.2) was issued by the Corporate Office of the Bank to all the Local Head Office. As a consequence of the said circular, another circular was issued by the Local Head Offices to all the Branch Offices in the Chandigarh circle i.e. where the petitioner was employed. It was pointed out that the issue as to whether an employee who submits an application for voluntary retirement under the Scheme can withdraw such application subsequently, has been examined. It

was communicated that the Scheme is purely voluntary. The role of employee is active and it is his conscious decision and there will be no reason for his withdrawal of application at a later date. However, there could be few genuine cases, where the employee would later to withdraw the option submitted under the Scheme for various reasons and, therefore, an opportunity was given to the employee who has submitted an application for retirement under the Scheme to withdraw the application on or before 15.2.2001.

The petitioner submitted his request for voluntary retirement and vide communication (P.3) dated 17.3.2001, the request of the petitioner for voluntary retirement under the Scheme was accepted. The relevant part of the said communication reads as under:-

> "Your request for retirement under the Scheme has been accepted and you will be relieved of your duties as at the close of business of 31.03.2001."

However, on 27.3.2001, the petitioner submitted an application to withdraw his request for voluntary retirement. The said application was declined by the respondent-Bank on 18.4.2001 pointing out that the date for withdrawal of application has already been exhausted on 15.2.2001. The petitioner also wrote a letter dated 12.4.2001 claiming pension under the Pension Funds Rule in terms of State Bank of India Employees' Pension Fund Rules (hereinafter referred to as `the Rules'). The petitioner also sought leave encashment. The claim of the petitioner for withdrawal of his application for voluntary retirement, pension and leave encashment was again declined by the Bank on 4.7.2001. It was thereafter that the petitioner filed the present writ petition on 13.9.2001.

It may be noticed that though the petitioner has claimed a writ in the nature of Certiorari for quashing the orders Annexures P.8 and P.10 passed by the respondent-Bank rejecting the claim of the petitioner for withdrawal of his voluntary retirement option and for declining his claim for pension and leave encashment, but the petitioner has not sought any relief in respect of his reinstatement in service or claiming continuity of service. Still further, the petitioner has not raised any question of law in respect of withdrawal of his application for voluntary retirement although the petitioner has claimed as many as six questions of law for the determination by this Court.

Earlier, the writ petition filed by the petitioner came up for final hearing before this Court along with bunch of other writ petitions, wherein challenge was made to the framing of the Scheme itself. 71 writ petitions were allowed by this Court vide a judgment reported as **Mohinder Pal Singh v. Punjab and Sind Bank and others, 2002(2) SLR 716**. However, in appeal, the Hon'ble Supreme Court in judgment reported as **Bank of India and others v. O.P. Swarankar etc. 2003(1) SLR 1**, accepted the appeals and dismissed the writ petitions wherein challenge was made to the formulation of the Scheme. 10 writ petitions (including the present writ petition) were remanded back for determination of this Court wherein the prayers were made to the effect that the Bank should be directed to act in terms of the Scheme. The relevant part of the order reads as under:-

> "90. For the reason aforementioned, we direct that:-
>
> 1. The appeals preferred by the Nationalised banks arising from the High Courts are dismissed except the

cases where the concerned employees have accepted a part of the benefit under the scheme; However, in respect of such of the employees who despite acceptance of a part of the retirement benefit under the scheme had continued under the orders of the High Court and has retired on attaining the age of superannuation, this order shall not apply;

2. The appeals filed by the State Bank of India are allowed;
3. The appeals arising from the judgments of the Uttaranchal High Court are allowed and the judgments of the said High Court are set aside;
4. The appeals arising from the judgments of the Punjab and Haryana High Court in relation to ten writ petitions which were filed by the employees for a direction upon the bank that the benefits under the scheme be paid to them are set aside and the matters are remitted to the High Court for consideration thereof afresh on merits and in accordance with law."

Learned counsel for the petitioner has argued that the petitioner had made an offer to seek voluntary retirement in terms of the Scheme framed by the Bank. However, before the acceptance of the said offer could come into effect, the petitioner has withdrawn his offer for voluntary retirement. Therefore, the petitioner continues to be in service and the orders passed by the respondent-Bank declining the withdrawal of offer to seek voluntary retirement are patently illegal and unwarranted. The

petitioner has relied upon para No. 50 of the judgment in the case of **O.P. Swaranakar** (supra); **Shambhu Murari Sinha v. Project & Development India Ltd., (2002)3 Supreme Court Cases 437** and **Hindustan Copper Ltd. And Anr. v. Banshi Lal and Ors., 2006(1) SLR 454.**

On the other hand, learned counsel for the respondents, controverting the said argument, raised a plea that the petitioner having accepted the benefits under the said Scheme cannot be permitted to seek the withdrawal of offer to seek voluntary retirement. It is also argued that having received the financial benefits, the petitioner cannot be permitted to raise a dispute regarding the withdrawal from the Scheme in terms of the aforesaid judgment.

Having heard learned counsel for the parties on the said question at considerable length, we do not find any merit in the argument raised by the learned counsel for the petitioner.

In **O.P. Swaranakar's case** (supra), the issue framed for determination was to the following effect:-

> "Whether an application by an employee to secure voluntary retirement under the Voluntary Retirement Scheme (VRS) can be withdrawn by such an employee before the same is accepted by the competent authority though the scheme contained an express stipulation that an application made thereunder is irrevocable and the employee will have no right to withdraw the application once submitted?"

While considering the said issue, the Court held to the following effect:-

> "The submission of learned Attorney General that as soon as an offer is made by an employee, the same would amount to resignation in praesenti cannot be accepted. The scheme was in force for a fixed period. A decision by the authority was required to be taken and *till a decision was taken, the jural relationship of employer and employee continued and the concerned employees would have been entitled to payment of all salaries and allowances etc. (emphasis supplied).* Thus, it cannot be said to be a case where the offer was given in praesenti but the same would be prospective in nature keeping in view of the fact that it was come into force at a later date and that too subject to acceptance thereof by the employer. We, therefore, are of the opinion that the decision of this Court, as referred to herein before, shall apply to the facts of the present case also."

In view of the aforesaid finding, the moment a decision is taken by the Bank, the jural relationship of employer and employee stood terminated. The petitioner has admittedly sought to withdraw his offer to seek voluntary retirement after the acceptance was conveyed to the petitioner. Mere fact that the date of voluntary retirement was fixed as 31.3.2001, is wholly inconsequential as employer and employee

relationship has already come to an end with the communication of acceptance. It it was only the procedural part under which the petitioner continued to work till 31.3.2001.

In **Shambhu Murari Sinha's case (**supra), though the employee has sought to withdraw from the offer after the offer was accepted by the management but such acceptance was conditional i.e. to the effect "the release memo along with detailed particulars will follow". While considering the said Clause, the Court held to the following effect:-

> "Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the "release memo along with detailed particulars would follow". Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7.8.1997 and 24.9.1997, but there was no response from the respondent. By office memorandum dated 25.9.1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26.9.1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26.9.1997. The appellant admittedly sent two letters withdrawing his voluntary

> retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had *locus poenitenatiae* to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end."

Therefore, the said judgment is distinguishable on facts. In fact, the issue raised by the petitioner stands concluded by the judgment inter-se between the parties wherein the matter has been remanded back in view of the prayers that the Bank should be directed to act in terms of the Scheme.

In **Hindustan Copper's case** (supra), relied upon by the petitioner, the applications to seek voluntary retirement were withdrawn before the same were accepted. The said judgment thus, does not provide any help to the petitioner, as the same is clearly distinguishable.

Still further, the petitioner has not framed any question of law for the determination of this Court nor specifically sought to enforce his communication to withdraw the offer to seek voluntary retirement. Still further, the petitioner having accepted financial benefits under the Scheme on 32.3.2001 itself, cannot be permitted to resile from the scheme in terms of the judgment in **O.P. Swaranakar's case** (supra), wherein it was held to the following effect:-

> "The scheme is contractual in nature. The contractual right derived by the concerned employees, therefore, could be waived. The employees concerned having accepted apart of the benefit could not be permitted to approbate and reprobate nor can they be permitted to

resile from their earlier stand."

Therefore, we do not find any merit in the first argument raised by the learned counsel for the petitioner.

Learned counsel for the petitioner has argued that in terms of para No. 6 of the Scheme, the petitioner is entitled to pension in terms of the Rules including commuted value of pension. It is also argued that even the petitioner is entitled to the benefit of leave encashment in terms of Clause 6 (d) of the Scheme. It is pointed out that in fact, the Pension Rules were amended on 9.3.2001. It is argued that the Rules, which were applicable on the date, the petitioner submitted his application for voluntary retirement alone are required to be taken into consideration. Alternatively, it is argued that even in terms of the amended Rule 22 of the Rules, the petitioner is entitled to pension.

Learned counsel for the respondent has filed an additional affidavit after the conclusion of the arguments with copy to the learned counsel for the petitioner in respect of the claim of the petitioner for pension. Reliance is placed upon an order passed by a Division Bench of the Delhi High Court in LPA No. 410 of 2002,. rejecting the claim of the similarly situated employees for pension under the Pension Rules. Reference is also made to an order passed by the Andhra Pradesh High Court in CWP No. 2098 of 2006, whereby the claim for pension has been declined.

Rule 22 of the Pension Rules has been amended vide notification dated 9.3.2001. Rule 22 of the Rules, which was in existence prior to the said date and after the said date, reads as under:-

22(i)	A member shall be entitled to a pension under these rules on retiring from the Bank's service- (a) After having completed twenty years' pensionable service provided that he has attained the age of fifty years or if he is in the service of the Bank on or after 1.11.93, after having completed ten years pensionable service provided that he has attained the age of fifty eight years.	A member shall be entitled to a person under these rules on retiring from the Bank's service- (a) After having completed twenty years' pensionable service provided that he has attained the age of fifty years or if he is in the service of the Bank of or after 1.11.93, after having completed ten years pensionable service provided that he has attained the age of fifty eight years or if he is in the service of the Bank on or after 22.5.1998, after having completed ten years pensionable service provided that he has attained the age of sixty years.

Rule 22 of the amended Rules, as para phrased**,** reads as under:-

"A member shall be entitled to a pension under these rules on retiring from the bank's service-

(1)After having completed twenty years' pensionable service provided that he has attained the age of fifty years; or

(2) if he is in the service of the Bank on or after

01.11.1993, after having completed 10 years pensionable service provided that he has attained the age of fifty eight years; or

(3) if he is in the service of the Bank on or after 22.5.1998, after having completed ten years pensionable service provided that he has attained the age of sixty years."

The petitioner has completed more than 19 years and 10 months of service on 31.3.2001, therefore, the first part of the Clause (a) is not applicable to the petitioner. Still further, the third part of Clause (a) is not applicable to the petitioner as he has completed 10 years of pensionable service but not attained the aged of 60 years. It is the case of the petitioner that in fact his case is covered under second part of Clause (a) which enables an employee to get pension if an employee is in service of the Bank on or after 1.11.1993 and has completed 10 years of service and attained 58 years of age.

Controverting the stand of the petitioner, the Bank has averred that the claim of the petitioner is not covered in first and third part of clause (a) of the above Rules. However, the written statement is silent regarding the claim of the petitioner under second part of clause (a).

The petitioner has submitted his offer for voluntary retirement in terms of the Pension Rules existing in the month of January, 2001. On the said date a member of the Pension Funds was entitled to pension on completion of 20 years of pensionable service provided he has attained the age of 50 years. Alternatively, if a member is in service of the Bank on or after 1.11.1993 and has completed 10 years of pensionable service and has attained the age of 58 years, he shall be entitled to the pension. The

petitioner fulfils the second part of Clause (a) of Rule 22 which was in existence on the day when the petitioner submitted his request for voluntary retirement. Even after the amendment on 9.3.2001, another clause has been added i.e. 3rd part of Clause (a) as mentioned above, which does not affect the claim of the petitioner for pension as he is entitled to pension in the second part of Rule 22(1)(a).

The judgment of Delhi High Court does not deal with a case of writ petitioner to claim pension. The Court has found that one either takes the scheme or rejects it. While offering to opt for the Scheme, the employee takes into consideration the implications also. Therefore, while giving offer for voluntary retirement in fact, the petitioner has taken into consideration, the pensionary benefits which the petitioner is entitled to in terms of the Scheme framed by the respondent-Bank. The said judgment does not advance the case of the respondent any further, as the petitioner has sought pension in terms of the Scheme. Similarly, the judgment of Andhra Pradesh High Court also does not deal with the second part of Rule 22 as discussed above. It is the case which deals with the first part of Clause(a) of Rule 22(1). Therefore, even the said judgment is of no help to the respondent.

In the present case, it is apparent from the record that the petitioner was in service of the Bank on 1.11.1993 and has completed 10 years of pensionable service. He has also attained the age of 58 years. Therefore, in terms of Rule 22 of the Pension Rules, the petitioner is entitled to pension. The rejection of the claim of the petitioner for pension is wholly untenable. Similarly, the claim for leave encashment is based upon the circular of the Bank dated 23.9.1986 (R.15). The leave encashment is

payable to an employee of the Bank, who has been discharged if he is eligible for pension. Since, it has been found that the petitioner is entitled to pension in terms of the Pension Rules, the petitioner is entitled to leave encashment as well.

In view of the above discussion, we allow the present writ petition by quashing Annexure P.10 to the extent it declines the pension and leave encashment to the petitioner. The respondent-Bank is, therefore, directed to calculate the amount of pension and leave encashment and pay the same within three months from today along with interest @ 9% p.a. thereon, from the date the amount became due till its payment.

(HEMANT GUPTA)
JUDGE

(MOHINDER PAL)
JUDGE

December 20, 2007
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